

Adult Support and Protection Consultation
Adult Care and Support Change Team
Scottish Government
Area 2-East Rear
St Andrew's House
Regents Road
Edinburgh
EH1 3DG

Dear Sirs,

**CONSULTATION ON THE CODE OF PRACTICE FOR PART 1 OF THE ADULT
SUPPORT AND PROTECTION (SCOTLAND) ACT 2007 (ASP) AND ASSOCIATED
REGULATIONS ON PERFORMING COUNCIL OFFICER FUNCTIONS**

On behalf of West Dunbartonshire Council, I am pleased to provide the following comments in response to the national consultation on the Code of Practice.

The Code of Practice is of course welcome and the group involved in drafting it is to be complimented on their efforts to contain such a complex piece of legislation in a Code that must also reference other legislation such as the Adults with Incapacity (Scotland) Act 2000 and the Mental Health Care and Treatment (Scotland) Act 2003 and their associated regulations, amendments and Codes of Practice, and ensure compliance with the European Convention on Human Rights.

The Code is well signposted with clear headings and an FAQ approach which is attractive and helpful. It does however present a heavy read, often repeating the detail of the Act. While this is perhaps inevitable to ensure that the Act is not undermined or misinterpreted, the Code would benefit from short case studies or vignettes, particularly ones that examine contentious issues, that would provide exemplars of best practice. Diagrams or flowcharts showing linkages between associated legislation and Codes of Practice would help practitioners and those with responsible functions to understand and negotiate their way through what is now a very complex family of protective and supportive legislation. This would of course assist the preparation and delivery of training.

For example, the draft code in considering **undue pressure** states;

*'Protection orders cannot be made if the court knows that the affected adult at risk has refused to consent to the granting of the order. The only exception to this is where the adult at risk is found to have been **unduly pressurised** to refuse to consent and there is no other protective action, which the adult would consent to, which could be taken' (page 8) and 'If the council decides to pursue an application where the affected adult has capacity to consent and has made known their refusal to consent, **then the council must prove that the adult has***

been “unduly pressurised” by the person suspected of harming the adult. Where the adult does not have such capacity, then this requirement does not apply’ (page 44).

Guidance on the meaning, the assessment and extent of assessment of undue pressure would be helpful as it is likely to present a council officer undertaking an investigation and assessment with a host of dilemmas ranging from assessment of the adult’s capacity to consent in a situation where there may be undue pressure to actually obtaining objective evidence to prove that there is undue pressure.

Elsewhere, for example in considering Removal orders, the draft code states;

*The purpose of a removal order is to assess the adult’s situation and to support and protect them. This is a short term order and, although effective for a maximum of seven days, it is envisaged that it will not be required to last that long in the majority of cases. A removal order will be granted only where the sheriff is satisfied that the adult is likely to be seriously harmed if not moved to another place and that there is a suitable place available to remove the adult to. **The council must protect any property owned or controlled by an adult who is removed from a place under a removal order’** (page 10)*

Guidance and a case scenario on quite how this can be accomplished where for example an alleged perpetrator of abuse continues to live in or have access to the adult’s property would be helpful.

Of particular concern is the definition of who constitutes a council officer.

We agree with the draft’s proposal that council officers who undertake functions set out in sections 7-11, 14, 16, and 18 of the Act will need, as a minimum, to be either:

- registered with the Scottish Social Services Council (SSSC) or equivalent, as social workers under section 44 (1) of the Regulation of Care (Scotland) Act 2001;
- or
- occupational therapists registered with the Health Professions Council;
- or
- nurses registered with the Nursing and Midwifery Council;
- and
- have at least six months post qualification experience in identifying, assessing and managing adults at risk.

The assumption being that the standard for continuous professional development required by the SSSC and the continuing registration requirements of both the Health Professions Council and Nursing and Midwifery Council would ensure that council officers have the necessary competence to identify, assess and manage

adults at risk; and local authorities would also have a role in ensuring the continued competence of those they employ to undertake council officer functions.

We also agree with the proposal that other council officers, registered as social service workers on the SSSC register under section 44(1) of the Regulation of Care (Scotland) Act 2001 may be well placed through the nature and course of their work to exercise limited functions such as : visits ; interviews ; and initial assessments.

We suggest that consideration is given to the role of registered health professionals, not directly employed by the council but working in integrated teams and services, acting with delegated powers of council officers, delegated under the section 17 of the Community Care and Health (Scotland) Act 2002.

It makes sense that Mental Health Officers (MHO) should intervene in such cases where it is known that the adult has a mental disorder. However, as MHOs are already registered with the Scottish Social Services Council (SSSC) as social workers under section 44 (1) of the Regulation of Care (Scotland) Act 2001, they would be, in any event, designated as council officers for the purposes of the Act. It may therefore be too prescriptive and lack flexibility to ascribe such functions to MHOs only, even where an adult is known to have a mental disorder. It is our view that this determination is best left to senior officers who screen and allocate work.

Yours sincerely,

William W Clark
Executive Director of Social Work and Health Services